

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COUNCIL 16 NORTHERN  
CALIFORNIA HEALTH AND WELFARE  
TRUST FUNDS,

No. C-10-04765 SBA (EDL)

**ORDER GRANTING PLAINTIFF'S  
REQUEST FOR ISSUANCE OF WRIT OF  
EXECUTION**

Plaintiffs,

v.

S D FLOORING,

Defendant.

On January 5, 2011, Judge Armstrong entered a judgment pursuant to stipulation in favor of Plaintiffs in the amount of \$45,950.87. See Request for Issuance of Writ at Ex. A. Under the stipulated judgment, Defendant was required to, among other things, make monthly payments of \$3,228.00 beginning on December 15, 2010 and continuing until November 15, 2011. Id. at ¶ 4(a). The stipulated judgment also conditionally waived liquidated damages upon timely compliance with the terms of the stipulation. Id. at ¶ 4. Further, the stipulation required Defendant to remain current with ongoing monthly contributions. Id. at ¶¶ 7, 9.

Plaintiff has now filed a Motion for Issuance of Writ of Execution, arguing that Defendant is in default of the terms of the stipulation because it failed to pay October 2010 contributions in the amount of \$62,326.58, and because it did not timely pay the November 2010 contributions of \$48,946.02. See Request for Issuance of Writ at Ex. B, C. Plaintiffs seek a writ of execution pursuant to paragraph twelve of the stipulated judgment consisting of: (1) the balance of the stipulated judgment of \$28,947.05; (2) the liquidated damages that were conditionally waived of \$7,598.27; (3) interest on those amounts of \$40.83; (4) October 2010 contributions, liquidated damages, interest of \$75,278.56; (5) November 2010 liquidated damages and interest of \$9,963.53;

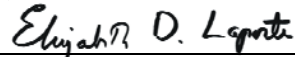
1 (6) fees of \$2,685.00 and (7) costs of \$75.00. The total amount of the requested writ is \$124,588.24,  
2 plus interest from the date of the filing of the Motion for Issuance of Writ of Execution. In the  
3 stipulated judgment, the parties expressly consented to the jurisdiction of a magistrate judge for  
4 issuance of a writ of execution. Id. at ¶ 12(b).

5 The stipulated judgment provides that upon Defendant's default of the terms of the  
6 judgement, a writ of execution may issue without further notice to Defendant. See Request for  
7 Issuance of Writ Ex. A at ¶ 12(b). The stipulated judgment also provides that the writ can be in the  
8 amount of the unpaid balance of the judgment "plus any additional amounts under the terms herein."  
9 See id. Here, Plaintiffs have established that Defendant has defaulted on the term of the stipulated  
10 judgment requiring that it remain current in its contributions. See id. ¶ 9. Further, Plaintiffs have  
11 adequately established the additional amounts due under the stipulated judgment.

12 Accordingly, the clerk shall issue a writ of execution in the amount of \$124,588.24, plus  
13 interest in the amount of \$407.68 for the period from January 27, 2011 through the date of this Order  
14 for a total of \$124,995.92, plus 5% per annum interest on the Stipulation balance and contributions  
15 (\$91,273.63), which is \$12.50 per diem, and 0.26% per annum interest on the other amounts due  
16 (\$33,314.61), which is \$0.24 per diem, from February 28, 2011 until satisfied.

17 **IT IS SO ORDERED.**

18 Dated: February 28, 2011

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20 ELIZABETH D. LAPORTE  
21 United States Magistrate Judge  
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